

FILED

Clerk of the Superior Court

DEC 11 2006

By: K SANDOVAL, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Coordination Proceeding
Special Title (Rule 1550(b)):

JUDICIAL COUNCIL COORDINATION
PROCEEDING NOS. 4221, 4224, 4226 and
4228

The Honorable Ronald S. Prager
Coordination Trial Judge

NATURAL GAS ANTI-TRUST CASES I,
II, III & IV

~~PROPOSED~~ JUDGMENT, FINAL
ORDER, AND DECREE GRANTING
FINAL APPROVAL TO CLASS ACTION
SETTLEMENT WITH WILLIAMS
DEFENDANTS

Date: December 11, 2006
Time: 10:00 a.m.
Courtroom: Department 71

This Document Relates To:

THE FOLLOWING PRICE INDEXING
CASES ONLY:

*Team Design, et al. v. Reliant Energy, Inc., et
al.*, Los Angeles County Superior Court Case
No. BC294113

Uyeda, et al. v. Centerpoint Energy, Inc., et al.,
San Diego County Superior Court Case No.
GIC810580

*Oberti Wholesale Foods, Inc. v. Encana
Energy Services, Inc., et al.*, Alameda County
Superior Court Case No. RG03098109

579062.1

JUDGMENT GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT

1 *Shanghai 1930 Restaurant Partners, L.P. v.*
2 *EnCana Energy Services, Inc., et al., San*
3 *Francisco County Superior Court Case No.*
CGC-03-420785

4 *A.L. Gilbert Co. v. Coral Energy Resources,*
5 *L.P., et al., Alameda County Superior Court*
Case No. RG03097835

6 *Brown v. Encana Energy Services, Inc., et al.,*
7 *Alameda County Superior Court Case No.*
RG03099036

8 *Podesta v. EnCana Energy Services Inc., et al.,*
9 *San Joaquin County Superior Court Case*
No. CV021175

10 *Lois the Pie Queen v. EnCana Energy Services*
11 *Inc., et al., Alameda County Superior Court*
Case No. RG03104286

12 *Vittice Corp. v. EnCana Corp., et al., Alameda*
County Superior Court Case No. RG04137797

13 *Benscheidt, et al. v. AEP Energy Services, Inc.,*
14 *et al., San Diego County Superior Court Case*
No. GIC825011

15 *Older v. Sempra Energy, et al., San Diego*
16 *County Superior Court Case No. GIC835457*

17 *Bustamante v. The McGraw-Hill Companies,*
18 *Inc., et al., Los Angeles Superior Court Case*
No. BC285598

1 This matter is before the Court on the motion for final class certification and final
2 approval of a proposed class action settlement (the "Settlement") of the above-captioned cases
3 (the "Class Actions") entered into between, on the one hand, plaintiffs A.L. Gilbert Company,
4 Mark and Susan Benscheidt dba Madera Wash Depot and Countrywood Laundromat, David C.
5 Brown, H & M Roses, Inc., Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,
6 Dan L. Older, Craig Podesta, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema
7 Silverman, Tom and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence
8 Uyeda, and Vittice Corporation (collectively, the "Class Representatives"), individually and on
9 behalf of the Settlement Classes (as defined below), and, on the other hand, defendants The
10 Williams Companies, Inc. and Williams Power Company, Inc., formerly known as Williams
11 Energy Marketing and Trading Co., Inc. (collectively, "Williams," and, together with the Class
12 Representatives, the "Settling Parties"), as set forth in the Settlement Agreement attached hereto
13 as Exhibit A.

14 By the Order Granting Preliminary Approval of Class Action Settlements entered on
15 September 1, 2006 (the "Preliminary Approval Order"), the Court: (a) conditionally certified the
16 Settlement Class and Subclasses defined therein (collectively, the "Settlement Classes"); (b)
17 appointed the Class Representatives and their counsel ("Class Counsel") to represent the
18 Settlement Classes, as set forth therein; (c) granted preliminary approval to the Settlement; and
19 (d) ordered that notice of the Settlement be disseminated to the Settlement Classes, as directed
20 therein, on or before October 11, 2006.

21 In compliance with the Preliminary Approval Order, notice was published and/or mailed
22 to the members of the Settlement Classes on or before October 11, 2006.

23 On December 11, 2006, the Settling Parties appeared before the Court at the final
24 approval and fairness hearing (the "Fairness Hearing"), represented by their respective attorneys.
25 An opportunity to be heard was given to all persons requesting to be heard. The Court has
26 reviewed and considered all of the pleadings filed in connection therewith, and all of the
27 arguments and evidence presented at the Fairness Hearing in support of the Settlement.

28 In addition to the foregoing, on November 15, 2006, Williams noticed, filed, and served

1 the Settling Defendants' Joint Motion for Determination of Good Faith Settlement (the "Good
2 Faith Motion"), pursuant to California Code of Civil Procedure Section 877.6(a)(1). No
3 nonsettling party, or any other alleged co-tortfeasor or co-obligor, has filed an opposition to the
4 Good Faith Motion.

5 The entire matter of the proposed Settlement having been duly noticed, and having been
6 fully considered by the Court,

7 IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that:

8 1. This Court has jurisdiction over the claims of the members of the Settlement
9 Classes asserted in this coordination proceeding, personal jurisdiction over the Settling Parties
10 (including the members of the Settlement Classes), and subject matter jurisdiction to approve the
11 Settlement.

12 2. Notice given to the members of the Settlement Classes was reasonably calculated
13 under the circumstances to apprise the class members of the pendency of the Class Actions, all
14 material elements of the proposed Settlement, and their opportunity to exclude themselves from,
15 to object to, or to comment on the Settlement and to appear at the Fairness Hearing. The notice
16 was reasonable and the best notice practicable under the circumstances; was due, adequate and
17 sufficient notice to all class members; and complied fully with the laws of the State of California,
18 the California Code of Civil Procedure, the California Rules of Court, due process, and any other
19 applicable statutes or rules. A full opportunity has been afforded to the members of the
20 Settlement Classes to participate in the Fairness Hearing, and all members of the Settlement
21 Classes and other persons wishing to be heard have been heard. Accordingly, the Court
22 determines that all members of the Settlement Classes are bound by this Judgment, Final Order,
23 and Decree.

24 3. The Court finds that the applicable requirements of the California Code of Civil
25 Procedure section 382 and California Rules of Court 1859 and 1860 have been satisfied with
26 respect to the Settlement Classes and the Settlement.

27 4. On September 1, 2006, this Court conditionally certified a Settlement Class,
28 defined as:

1 All individuals and entities who between January 1, 1999 and
2 December 31, 2002, inclusive (the "Class Period"), directly or
3 indirectly purchased natural gas in California and/or at the
4 California border for use. Excluded from the Settlement Class are:
5 individuals and entities who purchased natural gas for resale or for
6 generation of electricity for the purpose of resale (but solely with
7 respect to the extent of such purchases and not with respect to other
8 purchases); Defendants and their predecessors, affiliates,
9 subsidiaries, officers, and directors; federal, state, and local
10 governments and governmental agencies; any and all judges and
11 justices assigned to hear any aspect of this litigation, along with
12 their spouses and any minor children residing in their households;
13 any persons within the third degree of relationship of any judge or
14 justice assigned to hear any aspect of this litigation.

15 In addition, on that same date, this Court conditionally certified two Settlement Subclasses,
16 defined as:

17 **The Core Natural Gas Subclass**

18 All individuals and entities that purchased natural gas for use from
19 any source and were or would otherwise have been generally
20 classified as "core" or "core subscription" natural gas customers by
21 one or more of California's natural gas utilities, including, without
22 limitation, Southern California Gas Company, Pacific Gas &
23 Electric Company, San Diego Gas & Electric Company, City of
24 Long Beach Energy Department, and Southwest Gas Corporation,
25 at any time between January 1, 1999 and December 31, 2002.

26 **The Non-Core Natural Gas Subclass**

27 All individuals and entities that purchased natural gas for use from
28 any source and were or would otherwise have been generally
classified as "non-core" natural gas customers (excluding "core
subscription" customers) by one or more of California's natural gas
utilities, including, without limitation, Southern California Gas
Company, Pacific Gas & Electric Company, San Diego Gas &
Electric Company, City of Long Beach Energy Department, and
Southwest Gas Corporation, or who otherwise purchased natural
gas pursuant to contract, at any time between January 1, 1999 and
December 31, 2002.

5. Membership in the two Subclasses is subject to the same limitations and
exclusions as the Settlement Class, including that purchases must have been made by members of
these subclasses for use and not for resale or generation of electricity for the purpose of resale,
and the exclusion of governmental entities. Settlement Class members who switched from "core
subscription" or "core elect" status to "non-core" natural gas status during the class period (or
vice-versa) are members of both the Core Natural Gas Subclass and the Non-Core Natural Gas

1 Subclass.

2 6. The Court appointed the Class Representatives as representatives of the Settlement
3 Class. The Court appointed Class Representatives Mark and Susan Benscheidt, David C. Brown,
4 Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc., Dan L. Older, Shanghai 1930
5 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom and Lynette Stevenson, Timothy
6 Engeln, Inc. dba Team Design, Laurence Uyeda and Vittice Corporation as representatives of the
7 Core Natural Gas Subclass. The Court appointed Class Representatives A.L. Gilbert Company
8 and H&M Roses, Inc. as representatives of the Non-Core Natural Gas Subclass. The Court
9 appointed the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP as Co-Lead Settlement
10 Class Counsel and Lead Settlement Subclass Counsel for the Core Natural Gas Subclass. The
11 Court appointed the law firm of Engstrom, Lipscomb & Lack as Co-Lead Settlement Class
12 Counsel and Lead Settlement Subclass Counsel for the Non-Core Natural Gas Subclass. The
13 Court appointed the members of the Plaintiffs' Executive Committee as additional Settlement
14 Class Counsel.

15 7. California Code of Civil Procedure section 382 provides for class certification
16 when there is an ascertainable class and a well defined community of interest among class
17 members. The Settlement Class and each Subclass continue to meet this standard for class
18 certification, so that final certification of the Settlement Class and Subclasses is appropriate.
19 There have been no objections to the propriety of class certification.

20 8. The Court finds for the purposes of settlement only that: (i) the members of the
21 Settlement Class are so numerous that joinder would be impractical; (ii) there is a commonality of
22 interests among the members of the Settlement Class; (iii) there are questions of law and fact that
23 are common to the Settlement Class, and the common questions predominate over individual
24 questions; (iv) the Class Representatives' claims are typical of the claims of absent Settlement
25 Class members; and (v) the Class Representatives and Co-Lead Settlement Class Counsel will
26 fairly and adequately represent the interests of the absent Settlement Class members.

27 9. The Court finds for the purposes of settlement only that: (i) the members of the
28 Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a

1 commonality of interests among the members of the Core Natural Gas Subclass; (iii) there are
2 questions of law and fact that are common to the Core Natural Gas Subclass, and the common
3 questions predominate over individual questions; (iv) the claims of plaintiffs Mark and Susan
4 Benscheidt, David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,
5 Dan L. Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom
6 and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda, and Vittice
7 Corporation are typical of the claims of absent Core Natural Gas Subclass members; and (v) these
8 Class Representatives and Lead Settlement Subclass Counsel will fairly and adequately represent
9 the interests of the absent Core Natural Gas Subclass members.

10 10. The Court finds for the purposes of settlement only that: (i) the members of the
11 Non-Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a
12 commonality of interests among the members of the Non-Core Natural Gas Subclass; (iii) there
13 are questions of law and fact that are common to the Non-Core Natural Gas Subclass, and the
14 common questions predominate over individual questions; (iv) the claims of plaintiffs A.L.
15 Gilbert Company and H&M Roses, Inc. are typical of the claims of absent Non-Core Natural Gas
16 Subclass members; and (v) these Class Representatives and Lead Settlement Subclass Counsel
17 will fairly and adequately represent the interests of the absent Non-Core Natural Gas Subclass
18 members.

19 11. Accordingly, pursuant to California Code of Civil Procedure section 382, the
20 Court makes final its conditional certification of the Settlement Class and each of the two
21 Subclasses for settlement purposes only, and confirms the appointment of the Class
22 Representatives and Class Counsel to represent the Settlement Classes, as set forth above.

23 12. The following persons and entities not represented by their own counsel in this
24 coordination proceeding timely requested exclusion: Southern California Edison Company,
25 Pacific Gas and Electric Company,; Sierra Pacific Resources (on behalf of itself and related
26 entities); Wayne E. Williams, James H. Bailey, E. & J. Gallo Winery, Gallo Glass Company, and
27 BP Energy Company. Each of these entities (and, with respect to Sierra Pacific Resources, the
28 additional entities identified in its request for exclusion) are excluded from the Settlement

1 Classes.

2 13. The following persons and entities, represented by their own counsel in this
3 coordination proceeding, timely filed requests for exclusion: County of San Diego, County of
4 San Mateo, County of Santa Clara, County of Alameda, City and County of San Francisco, City
5 of Los Angeles, City of San Diego, Sacramento Municipal Utility District, The Board of Trustees
6 of The California State University, The Regents of the University of California, School Project
7 for Utility Rate Reduction (SPURR),; ABAG Publicly Owned Energy Resources; California Steel
8 Industries, Inc.; Hanson Permanente Cement, Inc.; TAMCO; Vista Metals Corp.; Nurserymen's
9 Exchange, Inc.; Owens-Brockway Glass Container, Inc.; PABCO Building Products, LLC and
10 Basalite Concrete Products, LLC. Each of these entities are excluded from the Settlement
11 Classes.

12 14. There have been no objections to the Settlement. The Coachella Valley Taxi
13 Owners Association has filed a comment in support of the Settlement.

14 15. The Court hereby grants final approval to the Settlement and finds that it is fair,
15 reasonable, and adequate, and in the best interests of the Settlement Classes.

16 16. The Settlement is entitled to a presumption of reasonableness, as it was negotiated
17 at arms'-length by experienced and well-prepared Class Counsel, and there have been no
18 objections to the Settlement. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2001)
19 85 Cal. App. 4th 1135, 1151.

20 17. The Settlement is also fair, reasonable, and adequate, as measured by the relevant
21 criteria. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (listing and applying
22 factors).

23 18. Prior to entering into the proposed Settlement, Class Counsel, who have extensive
24 experience in class action and antitrust litigation, were well-informed about the potential risks and
25 rewards of continued litigation, having conducted extensive discovery and investigation, having
26 consulted extensively with experts concerning Williams' potential liability and Settlement Class
27 members' damages, having overcome numerous pleading challenges, and having moved for
28 certification of a litigation class. In a case as complex as this, continued litigation presents

1 serious risks for the Settlement Class at trial, and further risks on appeal, as the survival of any
2 judgment rendered in the Settlement Class' favor may turn on appellate resolution of a number of
3 legal defenses raised by defendants, such as federal preemption and the filed-rate doctrine.

4 19. Finally, the reaction of Settlement Class members strongly favors settlement
5 approval. While the Settlement Class contains millions of members, only a handful have opted-
6 out of the Settlement Class, and none have objected to the Settlement.

7 20. The allocation of Settlement proceeds as between the Core Natural Gas Subclass
8 and the Non-Core Natural Gas Subclass, as set forth in the notices disseminated to the Settlement
9 Class, is also hereby approved as fair, adequate, and reasonable.

10 21. Accordingly, the Settlement Agreement, attached hereto as Exhibit A, is approved
11 and made a part of this judgment as if fully set forth herein, and shall have the full force and
12 effect of an order of this Court. The parties shall consummate the Settlement Agreement
13 according to its terms.

14 22. Under California Code of Civil Procedure sections 578, 579, and 664.6, the Court,
15 in the interests of justice, there being no just reason for delay, expressly directs the Clerk of the
16 Court to enter this Judgment, Final Order, and Decree, and hereby decrees, that upon entry, it be
17 deemed as a final judgment and appealable with respect to all claims asserted by members of the
18 Settlement Classes against Williams.

19 23. In addition to the effect of this final judgment, the Released Parties (as defined in
20 the Settlement Agreement) are released and forever discharged by the Class Representatives and
21 by each and every member of the Settlement Class from any and all claims, causes of action,
22 demands, rights, actions, suits and requests for equitable, legal and administrative relief of any
23 kind or nature whatsoever ("Claims") arising from or relating to (i) the facts alleged in any of the
24 Class Actions, including without limitation any and all Claims that were or could have been
25 asserted against Williams under state and federal antitrust laws, unfair competition statutes and
26 common law principles, unjust enrichment principles, or any other common law, statutory or
27 equitable theory; and (ii) the purchase of natural gas during the Class Period, including but not
28 limited to the purchase of physical natural gas and/or any transaction relating to, dependent upon

1 or derivative of the price of natural gas. Notwithstanding the foregoing, this final judgment does
2 not release any Claims that any member of the Settlement Class may have against any Released
3 Party based solely on the performance or non-performance of the parties under a contract between
4 the particular Settlement Class member and Released Party, but only to the extent such claim is
5 not based upon and does not depend upon any contention or proof that the rate or price charged
6 was affected in any way by any improper conduct relating to the price of natural gas. To the
7 extent any such contract-based claims would rely upon any conduct or matters released in this
8 paragraph, they are hereby waived, released and extinguished. Notwithstanding anything to the
9 contrary contained herein, this final judgment does not release a Released Party from any Claims
10 that any member of the Settlement Class classified as a "core customer" by the California Public
11 Utilities Commission may have against the Released Parties arising out of or relating to derivative
12 transactions. However, the Released Parties shall retain whatever legal rights they may have to
13 assert a set-off or other defense to such a Claim based upon any monies paid under this
14 Settlement. This final judgment does not release any Claim against any entity other than the
15 Released Parties, or any Claim or liability as between any Settlement Class member and any other
16 Settlement Class member.

17 24. To the fullest extent permitted by law, the Class Representatives, on behalf of
18 themselves and each and every member of the Settlement Class, expressly waive the benefits of
19 any statutory provision or common law rule that provides, in sum or substance, that a release does
20 not extend to claims which the releasor does not know or suspect to exist in its favor at the time
21 of executing the release, which if known by it, would have materially affected its settlement with
22 the other party. In particular, but without limitation, the Class Representatives, on behalf of
23 themselves and each and every member of the Settlement Class, understand the provisions of
24 California Civil Code Section 1542, which provides:

25 A general release does not extend to claims which the creditor does
26 not know or suspect to exist in his or her favor at the time of
27 executing the release, which if known by him or her must have
28 materially affected his or her settlement with the debtor.

The Class Representatives, on behalf of themselves and each and every member of the Settlement

1 Class, with the advice of counsel, have agreed that (i) the provisions of California Civil Code
2 Section 1542 are hereby knowingly and voluntarily waived and relinquished, and (ii) the
3 provisions of all similar federal or state laws, rights, rules, or legal principles of any other
4 jurisdiction, to the extent that they are found to be applicable herein, also are hereby knowingly
5 and voluntarily waived and relinquished. Notwithstanding the foregoing waiver of California
6 Civil Code Section 1542, the releases set forth in this final judgment are specific to the matters set
7 forth in the releases and are not intended to constitute general releases as to all claims, or
8 potential claims, between the releasing and Released Parties.

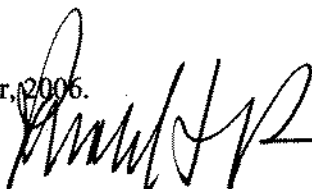
9 25. Without affecting the finality of this Judgment, Final Order, and Decree, the
10 Settling Parties, including the members of the Settlement Classes, have submitted to the exclusive
11 and continuing jurisdiction of this Court, and this Court reserves exclusive and continuing
12 jurisdiction over the Settlement, including the administration and consummation of the
13 Settlement.

14 26. Nothing in this Order shall be construed to expand the obligations of Williams
15 under the Settlement Agreement or to impose obligations on Williams other than those contained
16 in the Settlement Agreement.

17 27. As to Williams, the Class Actions are hereby dismissed with prejudice, and, except
18 as provided in the Settlement Agreement, without costs.

19 28. The Court hereby GRANTS the Good Faith Motion, and determines that the
20 settlement entered into in this case was made in good faith for the purposes of California Code of
21 Civil Procedure Sections 877 and 877.6.

22
23 SO ORDERED, this 11 day of December, 2006.

24
25 
26 Hon. Ronald S. Prager
27 Coordination Trial Judge
28 Superior Court of the State of California